

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----	X	
DOW JONES & COMPANY, INC. and	:	
CHRISTOPHER WEAVER,	:	
	:	<u>COMPLAINT</u>
Plaintiffs,	:	
-against-	:	
DEPARTMENT OF HEALTH & HUMAN	:	1:20-cv-03145
SERVICES,	:	
	:	
Defendant.	:	
-----	X	

Plaintiffs DOW JONES & COMPANY, INC. and CHRISTOPHER WEAVER, by and through their undersigned attorneys, allege:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to obtain an order to enjoin Defendant from withholding agency records and to compel the prompt production of records in response to a FOIA request properly made by Plaintiffs to the Indian Health Service (“IHS”), a component of the Department of Health and Human Services (“HHS”).
2. Defendant Department of Health & Human Services received Plaintiffs’ FOIA request on January 30, 2020. HHS has failed to respond to the request within the time limits required by FOIA, 5 U.S.C. § 552(a)(6)(A), (E).
3. Through this action, Plaintiffs, the publisher of *The Wall Street Journal* and a *Journal* reporter, seek to compel HHS to disclose report(s) prepared by Integritas Creative Solutions (“Integritas”) for IHS concerning IHS’s handling of “complaints of patient abuse, especially sexual abuse of minors.” IHS commissioned Integritas to investigate such issues following reporting by the *Journal* and the PBS series Frontline that showed agency officials had

missed warning signs, punished whistleblowers and – despite their suspicions – transferred from one reservation to another IHS pediatrician Stanley Patrick Weber, who was later convicted of sexually abusing Native American boys. *See* Christopher Weaver, Dan Frosch, Gabe Johnson, “A Pedophile Doctor Drew Suspensions for 21 Years. No One Stopped Him,” THE WALL STREET JOURNAL (Feb. 8, 2019), *available at* <https://www.wsj.com/articles/a-pedophile-doctor-drew-suspensions-for-21-years-no-one-stopped-him-11549639961>; *Predator on the Reservation*, FRONTLINE (Feb. 12, 2019), *available at* <https://www.pbs.org/wgbh/frontline/film/predator-on-the-reservation/>.

PARTIES

4. Plaintiff Dow Jones & Company, Inc. publishes *The Wall Street Journal* (www.wsj.com). Dow Jones & Company, Inc. is headquartered in this district at 1211 Avenue of the Americas, New York, NY.

5. Plaintiff Christopher Weaver is a reporter for *The Wall Street Journal* and an employee of Dow Jones & Company, Inc.

6. Defendant HHS is an agency of the federal government that has control of the records sought by Plaintiffs’ FOIA request. As indicated above, IHS is a component of HHS.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

8. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) because of Plaintiffs’ principal place of business in this district.

9. Defendant has failed to comply with FOIA's time limit provisions, and therefore Plaintiffs are deemed to have exhausted administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

BACKGROUND

10. On January 30, 2020, Plaintiffs submitted a FOIA request to IHS seeking "the report(s) by [Integritas] to the [IHS] pursuant to procurement 75H70419P00042" (the "Request"). The Request explained that Integritas created the report(s) in connection with a contract between IHS and Integritas executed on May 10, 2019. The Request sought expedited processing.

11. On January 30, 2020, IHS acknowledged that it received the Request, and assigned it FOIA case number 20-044.

12. IHS has otherwise failed to respond to the Request.

COUNT I

13. Plaintiffs repeat, reallege and incorporate the allegations in the foregoing paragraphs as though fully set forth herein.

14. HHS is an agency subject to FOIA and must disclose in response to a proper request for records all responsive records within its control and provide a lawful reason for withholding any portion of the records requested.

15. HHS has failed to provide records responsive to the Request within the time limits required by FOIA. Accordingly, Plaintiffs are deemed to have exhausted their administrative remedies.

16. HHS has violated FOIA by failing to issue a determination and to release the records within the time limits required by law.

17. HHS has no lawful basis for failing to disclose the records sought by the Request.

18. Accordingly, Plaintiffs are entitled to an order enjoining Defendant from withholding agency records and compelling the production of records sought by the Request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Declare that the records sought by the Request are public and must be disclosed;
- b. Enjoin HHS from withholding the records sought by the Request;
- c. Order HHS to provide the records sought by the Request to Plaintiffs promptly;
- d. Award Plaintiffs the costs of this proceeding, including reasonable attorney's fees, as permitted by FOIA; and
- e. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: April 20, 2020

Respectfully submitted,

/s/ Seth D. Berlin

Seth D. Berlin

Matthew E. Kelley (*pro hac vice* application forthcoming)

BALLARD SPAHR LLP

1909 K Street, NW, 12th Floor

Washington, DC 20006

Telephone: (202) 508-1122

Facsimile: (202) 661-2299

berlins@ballardspahr.com

kelley@ballardspahr.com

Counsel for Plaintiffs